Appeal No. 50 of 1905-06.

Appellants	*Versus*	Respondent
1. Sultan Sabi 2. Ismail Sheriff 3. Syed Mustan 4. Davud Khan Sabi and few other raiyats below Kolar Amanikere.		Munivenkatappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Kolar District, directing the grant of Survey No. 28 (kharab) of Kolar kasba to the respondent in lieu of some other lands of his submerged by the raising of the weir of Kolar Amanikere, the appellants contending that it should be reserved for public use.

The facts of the case appear sufficiently from the following :—

Decision.

Certain lands belonging to the respondent were resumed from him and included in the bed of the Kolar Amani tank. Instead of compensation the respondent asked for and obtained in exchange a small bit of kharab land so far back as July 1901. This land was duly assessed by the Survey Department in February 1902. The respondent has since been in possession. Some three and a half years after the grant of the land to him, the appellants objected to the grant on the ground that there was a pond on the land which was useful not only to the travelling public but also to themselves. The Deputy Commissioner (Mr. Puttanna Chetty) declined to interfere with the grant which had been made by his predecessor (Mr. Carr) in 1901. Hence this appeal.

2. The so called pond or well is a mere pit on account of the existence of which this small piece of land was shown as kharab or unassessed waste in the Survey records. It is evident from the correspondence with the Survey Department that the lands in the occupancy of the appellants are not entitled to be irrigated from the water of the pond. That being so, it is not clear how the appellants could be said to have any valid grievance. Nor does there appear to exist much force in the allegation that the cultivation of the land would prejudicially affect the travelling public. All possible objections were fully considered by Mr. Carr before he granted the land to the respondent and got the Survey Department to fix an assessment on it No interference with the grant thus made and given to, is at this distance of time either called for or justifiable. In reporting upon the case Mr. Puttanna Chetty favors a resumption of the land from the respondent and the payment to him of compensation for the lands acquired from him and included in the water spread of the tank. Government are unable to agree with him either as to the necessity or as to the desirability, of reopening a question decided by Mr. Carr more than four years ago and of upsetting an arrangement which has since been in force. Neither public interests nor private, warrant any action of the kind suggested.

3. For the foregoing reasons Government hold that this appeal is not entitled to succeed and must accordingly be dismissed.

No R. 9823—R. M. 248-05-2, dated 23rd January 1906.

Copy of the above is forwarded to the Revenue Commissioner in Mysore together with the records received with his letter No. 4250, dated the 8th November 1905.

Appeal No. 52 of 1905-06.

Appellant	*Versus*	Respondent
Venkatramaiya		Rudraiya.

Subject.

Claim to the pateli office of Damarajanapalya, a Dakle village of Navilakurki in the Koratagere Sub-Taluk.

The facts of the case appear sufficiently from the following decision :—

Decision.

The respondent has long been the Hakdar Patel of the village of Damarajanapalya, having obtained the office in succession to his father so far back as the year 1873. The appellant is the patel of Navilakurki. At the Survey Settlement the former seems to have been treated as a Dakhala village and the latter as the Asli village. This did not, however, affect the parties each of whom continued until 1903 in the undisturbed possession of his own village. In that year, however, on the strength of the decision passed by Government in Appeal No. 22 of 1901-02, the Deputy Amildar compelled the respondent to surrender charge of his village to the appellant, The Deputy Commissioner interfered and set aside the Deputy Amildar's order on the ground that it had been passed under a misapprehension. The appellant now contests the correctness of the Deputy Commissioner's order. Admittedly he has no right to the office in dispute. All that he contends is that the Potgi Rules and standing orders entitle him to the charge of both the villages.

2. The decision relied upon by the Deputy Amildar does not apply. That was a case between two persons neither of whom was the representative of the original hakdar. Both were the nominees of the Deputy Commissioner, and Government held that the arrangement made by that officer was a clumsy one which could not be upheld. There was no question of hak and no body was deprived of any hak. The present case is thus clearly distinguishable from that one. For a case of this kind there is ample provision in para 2 of the Proceedings of Government No. 10267-75—R. 1055, dated the 3rd January 1894. There is nothing in the Potgi Rules in support of the appellant's contention that the respondent's hak has extinguished by the treatment of his village as a Dakhala village by the Survey Department. The case of patels differs materially from that of shanbhogs, the former being governed by the Proceedings of 3rd January 1894 above referred to and the latter by the principles laid down in Proceedings No. 11829-37—Pet. F. 35-94, dated the 24th January 1905. It is evident that the appellant has no right to oust the respondent and that consequently he has no valid grievance. It is true that both are small villages but this *per se* is no reason why one of the hakdars should be compelled to part with his hak in favour of the other. To both being appointed patels of both the villages with power to officiate by rotation, the appellant does not agree, and no other arrangement satisfactory to both the parties is feasible than the continuance of the one which has existed from time immemorial.

3. The Deputy Commissioner's order is upheld and this appeal is dismissed.

No. R. 9835—*R. M.* 794-04-4, *dated Bangalore,* 23*rd January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his letter No. 408, dated the 24th October 1905.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.